IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5745 OF 2006

SHRI JAHIRUDDIN UMRAO ALI ANSARI
Age 50 years, Occ:business,
Residing at House No.22, 1st
Nizampura, Bhiwandi, Dist. Thane. Petitioner
(Orig. Plaintiff)

Versus

BHIWANDI NIZAMPUR MUNICIPAL
SHAHAR CORPORATION.
Through its Commissioner
having office at Old S.T.Stand,
Bhiwandi, Dist; Thane. ..RESPONDENT
(Orig. Defendant)

Mr. A.G.Bhaktwani, Advocate, for the petitioner.
Mr. Nitin Jamdar, Advocate for Respondent.

CORAM: J.H.BHATIA,J.

DATE : 18th September, 2007.

JUDGMENT

1. Rule. Rule made returnable forthwith. With

consent of the learned Counsel for the parties, the matter is taken up for final hearing.

2. Heard learned Counsel for the parties.

3. The petitioner claims to have purchased Municipal House No.82 under a registered sale deed from the original owner, Dharma Jau Jadhav. The sale deed was registered on 15.10.1984. The sale deed reveals that the petitioner had purchased the construction on the area of 33’ x 35’. According to the petitioner, he never made any change in the construction. The respondent is a Municipal Corporation, Bhiwandi.

4. A show cause notice was issued by the respondent to the petitioner which was received by him on 1.10.2004. By that notice, it was contended that the petitioner had made unauthorised construction beyond the area of 20’ x 30’. The petitioner replied that the construction was standing in its original position since 1984 when he had purchased the house and he contended that in the assessment the area was wrongly shown as 20’ x 30’. Thereafter the respondent issued a notice for demolition of unauthorised construction.

5. The petitioner filed Regular Civil Suit No.590 of 2004 in the Court of the Civil Judge, Junior Division,Bhiwandi and also made an application Exhibit

5, for temporary injunction . In the reply, the respondent denied that the construction was standing in its exact condition since 3.10.1984. After going through the papers, the learned trial Court granted temporary injunction and restrained the respondent from demolishing the latrine and bathroom in part of the house till final decision of the suit. This order was challenged by the respondent in Misc. Civil Appeal No.124 of 2005. The learned District Judge, Thane, allowed that appeal and set aside the order passed by the Civil Judge, Junior Division. Therefore, the original plaintiff has preferred the present petition before this Court.

6. It appears that the learned District Judge, while passing the impugned order, based his decision only on the assessment shown in the Assessment Register. In the Assessment Register, the area of the construction was shown as 20’ x 30’. However, he noted that after the show cause notice was issued, the plaintiff had moved an application for correction of that record contending that the area was 25’ x 30’, and by mistake, it was shown as 20’ x 30’ only. The learned District Judge noted that the mistake has been pointed out by the petitioner after a long period of 20 years and, therefore, he did not believe the petitioner.

7. After perusal of the record, prima facie, it

appears that the plaintiff had purchased the property with construction of 30′ x 25′ from the previous owner, Dharma Jadhav by a registered sale deed dated 15.10.1984. It indicates that when this property was purchased by the petitioner, there was construction of 30′ x 25′. It is material to note that none of the parties has produced sanctioned plan of the house. According to the petitioner, he is not having that sanctioned plan because the house was constructed before the sale deed. The construction plan was sanctioned by the Municipal Corporation and naturally that record must be available with the Municipal Corporation. In my opinion, the sanctioned plan would be the important document to decide whether the sanction was granted for construction of 20′ x 30′ or 25′ x 30′. This cannot be decided merely on the basis of assessment. The possibility of mistake cannot be totally ruled out in taking entry in the assessment register. if now the suit house is demolished and later on the stand of the petitioner is found to be correct, the petitioner would suffer irreparable loss. These circumstances do not appear to have been taken note of by the learned District Judge while passing the impugned order.

8. In my considered opinion, in view of the facts, there was no need to interfere with the order of temporary injunction granted by the trial Court.

9. In the circumstances, the Petition is allowed. The impugned order passed by the District Judge, Thane in Misc. Civil Appeal No. 124 of 2005 is hereby set aside and the order passed by the trial Court in Regular Civil Suit No.590 of 2004 is hereby restored.

10. Bhiwandi Nizampur Municipal Corporation shall be at liberty to move the trial Court for early hearing of the suit which shall decided on its own merits without being influenced by any of the observations made by the Courts below or by this Court.

Rule made absolute accordingly.

(J.H.BHATIA,J.)